

SLEEP HERO NETWORK

Terms of Use

YOU WARRANT AND REPRESENT THAT YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, AND THAT YOU HAVE FULL AUTHORITY TO BIND SUCH ENTITY TO THIS AGREEMENT. SUBSEQUENT REFERENCES TO “YOU”, “YOUR” OR “CUSTOMER” MEAN SUCH ENTITY.

If you have your principal place of business in the US, this Agreement is an agreement between you and Awaken2Sleep d/b/a Sleep Hero Network (“Sleep Hero Network”). References to “Sleep Hero Network”, “us”, “we”, or “our” mean Awaken2Sleep d/b/a Sleep Hero Network, a California Corporation.

1. Use of Sleep Hero Network

- a. Your Usage Rights. Subject to the terms and conditions of this Agreement, during the Term, you have a non-exclusive, non-transferable, non-sublicensable right to access and use the Sleep Hero Network for your own internal business purposes in accordance with this Agreement. Use of The Sleep Hero Network is limited to the Users for whom you enable accounts, and you are responsible for all Users and their compliance with this Agreement and their access to, and use of, The Sleep Hero Network. For clarity, The Sleep Hero Network is provided as a service to you, not to Users individually.
- b. Accounts. Your registration and account information must be accurate, complete and kept up-to-date. The Sleep Hero Network accounts are for individual Users and cannot be shared or transferred. You must keep all login credentials confidential and agree to notify us immediately if you discover any unauthorized use of your accounts or login credentials. As described in the Documentation, different account types have different permissions (e.g., admin accounts) and you may not grant Users greater permissions than allowed under their account types.
- c. Restrictions. You will not (and will not permit anyone else to): (i) use The Sleep Hero Network on behalf of any third party or rent, lease, provide access to or sublicense The Sleep Hero Network to any third party, except Users as expressly permitted herein; (ii) reverse engineer, decompile, disassemble, or otherwise seek to obtain the source code to The Sleep Hero Network, except to the extent expressly permitted by applicable law (and then only upon advance notice to The Sleep Hero Network); (iii) copy, modify or create derivative works of The Sleep Hero Network; (iv) remove, modify or obscure any proprietary or other notices contained within The Sleep Hero Network; (v) publicly disseminate information

regarding the performance of The Sleep Hero Network; or (vi) share admin access permission with or grant similar access permissions to any third party not expressly approved by The Sleep Hero Network, and, if you decide to grant such admin access with an approved third party, you may allow the third party access to your data or content only to the extent necessary for the purpose approved by The Sleep Hero Network and consistent with your instructions. We reserve the right to limit such third-party access (e.g., by resetting the access or removing the app permission) at any time if we believe admin access has been or will be misused.

- d. Setup. During the set-up of your account, you will appoint a User as the system administrator(s) of your The Sleep Hero Network community who is responsible for managing your The Sleep Hero Network instance. You must ensure you have an active admin for your The Sleep Hero Network instance at all times.

2. Your Data and Obligations

- a. Your Data. As between the parties, you retain all right, title and interest (including intellectual property rights) in and to Your Data. During the Term, you grant The Sleep Hero Network a non-exclusive, worldwide, royalty-free, fully-paid right to use, copy, store, transmit, modify, display, perform and create derivative works of Your Data as necessary to provide The Sleep Hero Network to you, for related support purposes, and as otherwise expressly permitted in this Agreement. You acknowledge that The Sleep Hero Network is the data processor and that you are the data controller of Your Data, which The Sleep Hero Network may use on your behalf and in accordance with your instructions as set forth in this Agreement. You instruct The Sleep Hero Network to process Your Data for the purposes specified in this Agreement.
- b. Your Obligations. You agree to The Sleep Hero Network's Acceptable Use Policy and further agree: (i) that you are solely responsible for the accuracy and content of Your Data; (ii) to obtain all necessary rights and consents required by Laws from your Users and any applicable third party to allow the collection and use of data (including any personal data) with The Sleep Hero Network as contemplated in this Agreement; and (iii) that your use of The Sleep Hero Network, including Your Data and its use hereunder, will not violate any Laws or third party rights, including intellectual property, privacy or publicity rights. You are responsible for the selection and content of any of Your Policies applicable to your use of The Sleep Hero Network and for communicating Your Policies to Users, provided that any such policies must be consistent with this Agreement. If

any of Your Data is submitted or used in violation of this Section 2, you agree to promptly remove it from The Sleep Hero Network. You are solely responsible for any decision to share Your Data among Users or with third parties using The Sleep Hero Network, and we are not responsible for use, access, alteration, distribution or deletion of Your Data by those to whom you or your Users make it available.

- c. Prohibited Data. You agree not to submit to The Sleep Hero Network any information or data that requires safeguarding or dissemination controls pursuant to applicable laws and/or regulation ("Prohibited Information"). Examples of Prohibited Information include, but are not limited to, information categories identified as part of the Controlled Unclassified Information ("CUI") Registry maintained by the U.S. National Archives and Records Administration; patient, medical or other protected health information regulated by the Health Insurance Portability and Accountability Act ("HIPAA") or any similar federal or state laws, rules or regulations governing Health Information; "education records" as defined in the Family Education Rights and Privacy Act ("FERPA") and any other data subject to legal or regulatory safeguarding obligations and/or limitations on distribution. With regard to Health Information, you acknowledge that The Sleep Hero Network is not a Business Associate or subcontractor (as those terms are defined in HIPAA) and that The Sleep Hero Network is not HIPAA compliant. The Sleep Hero Network will have no liability under this Agreement for Prohibited Information, notwithstanding anything to the contrary herein.
- d. Indemnification. You will defend, indemnify and hold harmless The Sleep Hero Network (and its Affiliates and their respective directors, officers, employees, agents, and representatives) from and against all claims (from third parties and/or Users), costs, damages, liabilities and expenses (including reasonable attorneys' fees) arising out of or in connection with your breach or alleged breach of this Section 2 or otherwise related to Your Data, Your Policies or use of The Sleep Hero Network in violation of this Agreement. The Sleep Hero Network may, but is not obligated to, participate in the defense and settlement of any such claim with its own counsel and at its own expense. You shall not settle any claim without The Sleep Hero Network's written consent if the settlement requires it to take any action, refrain from taking any action, or admit any liability.
- e. Backups and Data Deletion. The Sleep Hero Network does not provide an archiving service, and you are solely responsible for creating backups of Your Data. You may delete Your Data consisting of User content at any

time through the administrator functionality of The Sleep Hero Network, subject to Section 9.d (Deletion of Your Data).

3. Security and Aggregate Data

- a. Security of Your Data. We will use commercially reasonable technical, organizational and security measures designed to protect Your Data in our possession against unauthorized access, alteration, disclosure or destruction, as further described in the Data Security Addendum.
- b. Aggregate Data. We may gather statistical data, analytics, trends and other aggregated or otherwise de-identified data derived from you and your Users' use of The Sleep Hero Network ("Aggregate Data"). For the avoidance of doubt, Aggregate Data does not include Your Data or any personal data.
- c. Legal Disclosures and Third-Party Requests. You understand that The Sleep Hero Network may disclose Your Data to comply with data-breach notification laws and other legal requirements. You are generally responsible for responding to third-party requests regarding Your Data, such as a subpoena, warrant, discovery order or other request or order from a law enforcement agency ("Third-Party Requests"). We will, to the extent allowed by law and by the terms of the Third-Party Request, use reasonable efforts to (i) notify you of our receipt of a Third Party Request and ask the third party to contact you and (ii) comply with your reasonable requests regarding your efforts to oppose a Third-Party Request at your expense. You will first seek to obtain the information required to respond to the Third-Party Request on your own, and will contact us only if you cannot reasonably obtain such information.
- d. Data Processing. Both parties shall comply with the Data Processing Addendum. The provisions of the **Data Processing Addendum** shall prevail should they conflict with any provisions found elsewhere in this Agreement.

4. Payment

- a. Fees. You agree to pay The Sleep Hero Network the fees specified in the **Fees Appendix**. All fees under this Agreement will be paid in USD, unless we agree otherwise with you in writing. All fees will be due monthly in arrears following the end of each month in respect of which any fees are payable. Fees will be settled in full in accordance with your payment method pursuant to Section 4.b. Any late payments shall be subject to a service charge equal to 1.5% per month of the amount due or the maximum amount allowed by law, whichever is less.

- b. Payment Method. When you enter into this Agreement you agree to settle fees under one of two categories of payment: (i) credit card customer, or (ii) invoiced customer, as determined in The Sleep Hero Network's discretion. Credit card customers may (in The Sleep Hero Network's sole discretion) become invoiced customers (and vice versa) based on factors such as the number of Active Users and creditworthiness, but The Sleep Hero Network retains the right to re-classify you as a credit card customer or an invoiced customer at any time.
- i. Credit Card Customers. Credit card customers will have their designated credit card charged for usage of The Sleep Hero Network.
 - ii. Invoiced Customers. Invoiced customers will be extended a credit line by The Sleep Hero Network and will be issued invoices on a monthly basis. If categorised as an invoiced customer, you will pay all fees due under this Agreement, in full and cleared funds as directed by us, within 30 days of the invoice date.
 - iii. You agree for us to obtain your business credit report from a credit bureau on acceptance of this Agreement, or anytime thereafter.
- c. Taxes. All fees are stated exclusive of any applicable taxes, and you are required to pay any sales, use, GST, value-added, withholding, or similar taxes or duties, whether domestic or foreign, related to the transactions under this Agreement. You will pay all amounts due under this Agreement in full without any set-off, counterclaim, deduction or withholding. In the event any payment that you make under this Agreement is subject to a deduction or withholding, you shall be responsible for making the appropriate payment to the appropriate taxing authorities and financially responsible for interest, penalties, fines, or similar liabilities resulting from your failure to timely remit such taxes to the proper governmental authority or agency. You shall provide applicable tax receipts/certificates of such withholding to us on a timely basis. You acknowledge and accept that you are accessing and using The Sleep Hero Network at the billing address listed in this Agreement or otherwise provided to us in writing and if such address is in the U.S., we will charge you applicable U.S. sales/use tax based on the location of your billing address. If a taxing authority asserts that The Sleep Hero Network should have collected taxes from you, and you paid such taxes directly to the state, you agree to provide us proof that such tax was paid (to the satisfaction of such taxing authority) within thirty (30) days of our written request therefor. You agree to indemnify us for any underpayment or non-payment of any tax, penalty and interest.

- d. Suspension. Without affecting our other rights under this Agreement, if you do not pay any fees by the due date, then we may suspend all or part of the The Sleep Hero Network services until payment has been made in full.

5. Confidentiality

- a. Obligations. Each party (as “Receiving Party”) agrees that all business, technical and financial information it obtains from the disclosing party (“Disclosing Party”) constitutes the confidential property of the Disclosing Party (“Confidential Information”), provided that it is identified as confidential at the time of disclosure or should be reasonably known by the Receiving Party to be confidential or proprietary due to the nature of the information disclosed and the circumstances surrounding the disclosure. The terms and conditions of this Agreement are deemed The Sleep Hero Network’s Confidential Information. Except as expressly authorized herein, the Receiving Party will (i) hold in confidence and not disclose any Confidential Information to third parties and (ii) not use Confidential Information for any purpose other than fulfilling its obligations and exercising its rights under this Agreement. The Receiving Party may disclose Confidential Information to its employees, agents, contractors and other representatives having a legitimate need to know (including, for The Sleep Hero Network, those of its Affiliates and the subcontractors referenced in Section 11.j), provided that such representatives are bound to confidentiality obligations no less protective of the Disclosing Party than this Section 5 and that the Receiving Party remains responsible for compliance by any such representative with the terms of this Section 5.
- b. Exceptions. The Receiving Party’s confidentiality obligations will not apply to information that the Receiving Party can document: (a) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (b) is or has become public knowledge through no fault of the Receiving Party; (c) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; or (d) is independently developed by employees of the Receiving Party who had no access to such information. The Receiving Party may make disclosures to the extent required by Laws or court order, provided that (unless prohibited by Laws) the Receiving Party notifies the Disclosing Party in advance and cooperates in any effort to obtain confidential treatment.
- c. Injunctive Relief. The Receiving Party acknowledges that use of or disclosure of Confidential Information in violation of this Section 5 could cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any such threatened or actual use or

disclosure by the Receiving Party the Disclosing Party will be entitled to seek appropriate equitable relief in addition to whatever other remedies it might have at law.

6. Intellectual Property Rights

- a. The Sleep Hero Network Ownership. This is an agreement for access to and use of The Sleep Hero Network, and no ownership rights are conveyed to Customer. The Sleep Hero Network and its licensors retain all right, title and interest (including all intellectual property rights) in and to The Sleep Hero Network, Aggregate Data, any and all related and underlying technology, and any derivative works, modifications or improvements to any of the foregoing created by or on behalf of The Sleep Hero Network, including based on your Feedback (defined below). No rights are granted to you except as expressly set forth in this Agreement.
- b. Feedback. If you submit comments, questions, suggestions, use cases or other feedback relating to your use of The Sleep Hero Network or its API or our other products or services ("Feedback"), we may freely use or exploit such Feedback in connection with any of our products or services or those of our Affiliates, without obligation or compensation to you.

7. Disclaimer

THE SLEEP HERO NETWORK EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT. WE DO NOT GUARANTEE THAT THE SLEEP HERO NETWORK WILL BE UNINTERRUPTED OR ERROR-FREE. THE SLEEP HERO NETWORK IS NOT RESPONSIBLE FOR ANY THIRD PARTY PRODUCTS THAT YOU CHOOSE TO USE IN CONNECTION WITH THE SLEEP HERO NETWORK.

8. Limitations of Liability

EXCEPT FOR EXCLUDED CLAIMS (DEFINED BELOW): (A) NEITHER PARTY WILL BE LIABLE FOR ANY LOSS OF USE, LOST OR INACCURATE DATA, INTERRUPTION OF BUSINESS, COSTS OF DELAY OR ANY INDIRECT, SPECIAL, INCIDENTAL, RELIANCE OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE; AND (B) NEITHER PARTY'S ENTIRE LIABILITY TO THE OTHER WILL EXCEED THE AMOUNT ACTUALLY PAID OR PAYABLE BY CUSTOMER TO THE SLEEP HERO

NETWORK DURING THE PRIOR TWELVE (12) MONTHS UNDER THIS AGREEMENT OR, IF NO FEES ARE PAID OR PAYABLE DURING SUCH PERIOD, TEN THOUSAND DOLLARS (\$10,000). “Excluded Claims” means (a) Customer liability arising under Section 2 (Your Data and Obligations); and (b) a party’s breach of its obligations in Section 5 (Confidentiality) but excluding breaches relating to Your Data.

9. The limitations in this Section 9 will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose. You acknowledge and agree that our provision of The Sleep Hero Network is based upon the assumption that our liability is limited as provided in this Agreement.

10. Term and Termination

- a. Term. This Agreement will continue until terminated as permitted herein (the “Term”).
- b. Termination for Convenience. Without prejudice to your termination rights under paragraph 2.d of the Data Processing Addendum, you may terminate this Agreement at any time, for no reason or any reason, upon thirty (30) days’ advance notice to The Sleep Hero Network by contacting Michael Cowen at michael@awaken2sleep.com. The Sleep Hero Network may also terminate this Agreement at any time, for no reason or any reason, upon thirty (30) days’ advance notice to you.
- c. The Sleep Hero Network Termination and Suspension. The Sleep Hero Network reserves the right to terminate this Agreement with reasonable notice to you or immediately suspend your access to The Sleep Hero Network if you breach this Agreement or if we deem such action necessary to prevent harm to the security, stability, availability or integrity of The Sleep Hero Network.
- d. Deletion of Your Data. The Sleep Hero Network will delete Your Data promptly after any termination or expiration of this Agreement, but you understand that deleted content may persist in backup copies for a reasonable period of time whilst deletion is carried out. As set forth in Section 2.e, you are solely responsible for creating any back-ups of Your Data for your own purposes.
- e. Effect of Termination. Upon any termination or expiration of this Agreement: (a) you and your Users must immediately cease using The Sleep Hero Network; (b) at the Disclosing Party’s request, the Receiving Party will promptly return or delete any of the Disclosing Party’s Confidential Information in its possession; (c) you will promptly pay The Sleep Hero Network any unpaid fees incurred prior to termination; and (d) the following Sections will survive: 1.c (Restrictions), 2 (Your Data and

Obligations) (other than The Sleep Hero Network's license to Your Data in Section 2.a), 3.b (Aggregate Data), 3.c (Legal Disclosures and Third Party Requests), 4 (Payment) through 12 (Definitions). Except as may be specified in this Agreement, either party's exercise of any remedy, including termination, is without prejudice to any other remedies it may have under this Agreement, by law or otherwise. If you downgrade your The Sleep Hero Network Premium instance to The Sleep Hero Network Standard, then you will be required to terminate this Agreement and Your Data will become subject to the The Sleep Hero Network Standard terms, and the obligation on The Sleep Hero Network to delete Your Data under Section 9.d will not apply.

11. General

- a. Changes. The Sleep Hero Network may change terms of this Agreement and policies referenced in or incorporated by this Agreement at any time, including but not limited to the Data Processing Addendum, Data Security Addendum, Acceptable Use Policy and Privacy Shield Addendum. The Sleep Hero Network may change this Agreement (including the Data Processing Addendum, Data Security Addendum, Acceptable Use Policy, and Privacy Shield Addendum) at any time by providing you with notice by email, through the service or by other reasonable means ("Change"). By continuing to use The Sleep Hero Network fourteen (14) days after our notice, you consent to such Change.
- b. Governing Law. This Agreement and your and your Users' use of The Sleep Hero Network as well as any claim that might arise between you and us, are governed by, and must be construed in accordance with, the laws of the United States and the State of California, as applicable, without giving effect to their principles of conflicts of law. Any claim or cause of action arising out of or relating to this Agreement or The Sleep Hero Network must be commenced exclusively in the U.S. District Court for the Northern District of California or a state court located in San Bernardino County, and each party hereby consents to the personal jurisdiction of such courts.
- c. Entire Agreement. This Agreement (which includes the Privacy Shield Addendum, the Data Processing Addendum, the Data Security Addendum, and Acceptable Use Policy) is the entire agreement between the parties regarding The Sleep Hero Network and supersedes any prior representations or agreements relating to The Sleep Hero Network. Headings are for convenience only, and terms such as "including" are to be construed without limitation. This Agreement is written in English (US), which will control over conflicts in any translated version.

- d. Waiver and Severability. Failure to enforce a provision will not be deemed a waiver; waivers must be in writing signed by the party claimed to have waived. Any terms or conditions in any Customer purchase order or business form will not modify this Agreement and are hereby expressly rejected, and any such document will be for administrative purposes only. If any provision of this Agreement is adjudged by a court of competent jurisdiction to be unenforceable, invalid or otherwise contrary to law, such provision will be interpreted so as to best accomplish its intended objectives and the remaining provisions of this Agreement will remain in full force and effect.
- e. Publicity. Any press release, publicity or public announcement about the parties' relationship requires the prior written approval of both parties. Notwithstanding the foregoing: (a) within your own company, you may publicize or promote use of The Sleep Hero Network during the Term (e.g., to encourage User adoption), subject to The Sleep Hero Network's brand usage guidelines provided from time to time, and (b) The Sleep Hero Network may reference your status as a The Sleep Hero Network customer in conferences, presentations and other non-public settings.
- f. Assignment. Neither party may assign this Agreement or its rights or obligations under this Agreement without the prior written consent of the other party, except that The Sleep Hero Network may assign this Agreement without consent to any of its Affiliates or in connection with a merger, reorganization, acquisition, or other transfer of all or substantially all of its assets or voting securities. Subject to the foregoing, this Agreement will bind and inure to the benefit of each party's permitted successors and assigns. Non-permitted assignments are void and will create no obligations on The Sleep Hero Network.
- g. Independent Contractor. The parties are independent contractors. No agency, partnership, joint venture, or employment is created as a result of this Agreement and neither party has authority to bind the other.
- h. No Third Party Beneficiaries. Save as set out in the Privacy Shield Addendum, this Agreement benefits The Sleep Hero Network and Customer and there are no intended third party beneficiaries, including any Users.
- i. Notices. Any notice under this Agreement must be in writing. Except as set forth in Section 9.b, Customer must send any notices to The Sleep Hero Network at the following address (as applicable): in the case of The Sleep Hero Network Ireland Limited, to 4 Grand Canal Square, Dublin 2, Ireland, Attn: Legal and, in the case of The Sleep Hero Network Inc, to 1 Hacker Way, Menlo Park, CA 94025 USA, Attn: Legal. The Sleep Hero

Network may send notices to the email address on Customer's account. The Sleep Hero Network may also provide operational notices regarding The Sleep Hero Network or other business-related notices through messages to Users within The Sleep Hero Network or conspicuous posting within The Sleep Hero Network.

- j. Subcontractors. The Sleep Hero Network may use subcontractors and permit them to exercise The Sleep Hero Network's rights under this Agreement, but The Sleep Hero Network remains responsible for compliance of any such subcontractor with this Agreement.
- k. Force Majeure. Neither party will be liable to the other for any delay or failure to perform any obligation under this Agreement (except for a failure to pay fees) if the delay or failure is due to unforeseen events that occur after the signing of this Agreement and that are beyond the reasonable control of such party, such as a strike, blockade, war, act of terrorism, riot, natural disaster, failure or diminishment of power or telecommunications or data networks or services, or refusal of a license or authorisation by a government agency or entity.
- l. Third Party Websites. The Sleep Hero Network may contain links to third-party websites. This does not imply our endorsement of any website and we are not responsible for the actions, content, information, or data of third-party websites or actions or any link contained in them, or any changes or updates to them. Third-party websites may provide their own terms and conditions of use and privacy policies that apply to you and your Users and your use of such third-party websites is not governed by this Agreement.

12. Definitions. In this Agreement, unless otherwise stated:

- a. "Affiliate" means an entity that directly or indirectly owns or controls, is owned or is controlled by or is under common ownership or control with a party, where "control" means the power to direct the management or affairs of an entity, and "ownership" means beneficial ownership of 50% (or, if the applicable jurisdiction does not allow majority ownership, the maximum amount permitted under such law) or more of the entity's voting equity securities or equivalent voting interests.
- b. "Fees Appendix" means the fees appendix to this Agreement, which includes details about your usage of The Sleep Hero Network and related fees.
- c. "Free Access" means any free trial or other no-charge access to The Sleep Hero Network provided by The Sleep Hero Network.
- d. "Laws" means all applicable local, state, federal and international laws, regulations and conventions, including, without limitation, those related to

data privacy and data transfer, international communications, the exportation of technical or personal data, and public procurement, and those applicable to The Sleep Hero Network Ireland Limited and The Sleep Hero Network, Inc.

- e. "Users" means any of your or your Affiliates' employees or contractors that you permit to access The Sleep Hero Network.
- f. "The Sleep Hero Network" means the The Sleep Hero Network service that we make available to you under this Agreement and any subsequent version thereof, including any websites, apps, online services, tools, and content that we may provide to you under this Agreement, as may be modified from time to time. For the avoidance of doubt, the The Sleep Hero Network Premium service is distinct from the service known as The Sleep Hero Network Standard which is subject to its own terms of use.
- g. "Your Data" means (a) any contact information or network or account registration data that you or your Users submit to The Sleep Hero Network; (b) any content or data that you or your Users publish, post, share, import or provide on The Sleep Hero Network; (c) information we collect when you or your Users contact or engage us for support regarding The Sleep Hero Network, including information about hardware, software, and other details gathered related to the support incident; and (d) any usage or functional information (e.g., IP addresses, browser and operating system types, and device identifiers) regarding how Users interact with The Sleep Hero Network.
- h. "Your Policies" means any of your applicable employee, systems, privacy, HR, complaint or other policies.